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# California Farmland Conservancy Program

## Focus on Farmland



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### This edition of Focus on Farmland features:

- CFCP Grant Protects Farmland near Gilroy
- Formation of new California Council of Land Trusts
- Legislative Roundup
- Conflicts of Interest and CFCP Application Requirements
- Farm and Ranch Lands Protection Program Releases RFP
- Upcoming Events

Read on!

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### Farmland Protection Efforts in Santa Clara County

The Santa Clara County Land Trust is poised to protect over 1,200 acres of contiguous cultivated farmland near the City of Gilroy. Having secured funding commitments from the California Farmland Conservancy Program (CFCP), the Farm and Ranch Lands Protection Program (FRPP) and others, the land trust is in the process of purchasing three agricultural conservation easements on three separate properties, all located in the rich southern portion of Santa Clara's South County Agricultural Preserve.

The first property, the 165-acres Mission Organics Home Ranch, is located just a quarter of a mile south of the City of Gilroy. The land trust recently purchased an agricultural conservation easement on the property, in cooperation with American Farmland Trust and with grant funding from the CFCP. The ranch's rich soils, abundant water and mild coastal-influenced climate allow for one to two harvests per year of organic baby lettuce, broccoli, and other organic produce. The owners have been responsible for creating stable national markets for baby lettuce through their Earthbound Farms brand.

The second property, the 480-acre Wang property, is located immediately south of the Mission Organics Home Ranch. With one mile of frontage on Highway 101, it is the first farm one sees when driving north on Highway 101 over the hills from Monterey and San Benito counties. In April 2003 the land trust purchased the property in fee to protect the farmland and enhance water quality. Although the land



*Harvesting lettuce on the Wang property. Photo by Tim Bryant.*

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trust will eventually hold a 282-acre easement on a portion of the property, American Farmland Trust will initially purchase and hold that easement until the land trust sells the property back into private ownership. The remainder of the ranch is being purchased by the local water district for water quality purposes. Funding for the easement is being provided by the CFCP and FRPP.

Located immediately east of the Wang property is the Taylor Ranch property. At 570 acres, it is the largest farm in the region. Its microclimate and soils support specialty lettuce and other row crops. The

ranch produces two cuttings of lettuce per year. The Taylor Ranch easement will be purchased by the land trust with funding assistance from the Santa Clara County Open Space Authority, the CFCP and FRPP.



*Looking down on the Mission Organics, Wang and Taylor Ranches.  
Photo by Tim Bryant.*

All three properties are located within the Pajaro River watershed and border Carnaderos Creek, part of a network of riparian areas that serve as wildlife corridors and support threatened steelhead trout. The farmland conservation efforts are part of a broader vision for the area: "The Pajaro Project," a partnership of numerous organizations aims to protecting farmland, open space, fresh water, and natural habitat in a 20,000-acre portion of the southern Santa Clara Valley. Maintaining the agricultural and open space character of the Pajaro River watershed will also help prevent downstream flooding in Pajaro and Watsonville.

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## Statewide Land Trust Council Recently Formed

Recognizing that there is no collective voice in Sacramento advocating for the needs of more than 200 land trusts in California, land trusts throughout the state are joining together to form the California Council of Land Trusts. As a result of a statewide needs assessment of land trusts and a series of meetings throughout the state, over the last year and a half a steering committee composed of individuals from a cross-section of land trusts has worked to create the statewide organization.

Land trusts have identified a number of high-priority needs that will guide the mission of CCLT. These include having a voice in shaping funding measures (such as state bond acts) for local conservation, fighting policy and legal challenges that threaten land trusts' ability to fulfill their mission (such as easement defense), and increasing the awareness and visibility of land trusts. The goal of the group is to become a powerful force for local conservation in California.

Memberships packets were sent out in early November for land trusts to become founding members. An office is being opened in Sacramento, and the first board of directors held a transition meeting with the steering committee in December. An inaugural event to formally launch the council is planned for February 1 in Sacramento. The event will include a first annual statewide land trust meeting along with a reception in the State Capitol rotunda. For more information about the California Council of Land Trusts or the inaugural event, please contact Darla Guenzler at 707-469-0926 or [darlag@inreach.com](mailto:darlag@inreach.com).

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## 03-04 Legislative Roundup

The 2003-04 legislative session ended with a few new laws that affect agricultural land conservation, as well as the broader issues of land conservation and conservation easements. Among these enacted bills are the following:

**AB 105, Chapter 497, Statutes of 2004:** Among other items, repeals a California Environmental Quality Improvement Revolving Loan Program, which never received funding. Also repeals a Coastal Farmland Preservation Program, which was never funded, and was previously determined to duplicate the work of the State Coastal Conservancy and the California Farmland Conservancy Program.

**SB 18, Chapter 905, Statutes of 2004:** Among other items, amends Section 815.3 of the Civil Code, which defines the entities or organizations that may acquire and hold conservation easements. The legislation adds California Native American tribes among these qualified conservation entities for the purposes of protecting prehistoric, archaeological, cultural, spiritual, or ceremonial places.

**AB 1492, Chapter 694, Statutes of 2003:** Provides a means for addressing material breaches of Williamson Act contracts, including the construction of buildings on contracted lands that are not permitted under such contracts. Defines a process for eliminating the conditions that resulted in material breaches. If the breach cannot be eliminated, provides for the payment of significant penalties.

**SB 1820, Chapter 790, Statutes of 2004:** Clarifies the process by which land under Williamson Act contract will be assessed by the county assessor for the purpose of determining cancellation fees under contract cancellation proceedings. Sets forth the procedures by which a formal review and potential recomputation of cancellation fees shall be made by the assessor, rather than by a board of supervisors or city council.

For more information on these and other bills, visit the Legislature's bill information website at <http://www.leginfo.ca.gov/bilinfo.html>.

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## Funding Update: Farm and Ranch Lands Protection Program Releases Request for Proposals

The federal Farm and Ranch Lands Protection Program (FRPP) released its 2005 Request for Proposals on December 6. The program provides funding for the acquisition of conservation easements on farms and ranches. Proposals must be received in the NRCS state office by April 5, 2005.

The FRPP has been allocated \$2.9 million in grant funds to California for the current federal fiscal year, which runs from October 2004 through September 2005. For more information about the FRPP, visit [www.nrcs.usda.gov/programs/frpp](http://www.nrcs.usda.gov/programs/frpp) or contact Jim Kocsis, NRCS California FRPP Program Manager, at [jim.kocsis@ca.usda.gov](mailto:jim.kocsis@ca.usda.gov) or 530-792-5605.

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## Conflict of Interest Issues and CFCP Grant Requirements

In every conservation easement transaction, it is critical to be aware of the potential for a conflict of interest and to be up-front about any potential concerns. Conflict of interest by board members, staff, or officials of organizations could lead to public criticism, legal challenge, or potentially even invalidation of the easement. Accordingly, the CFCP grant application process includes certain conflict of interest requirements. Below is some general background on the issue as it relates to easement transactions, as well as to the CFCP's specific conflict of interest requirements.

### Issues for Nonprofit Organizations

Board members of land trusts and other nonprofits have an obligation to support the mission of the organization and, because of the organization's tax-exempt status, to serve the general public. Board members should never derive any material advantage from their connection to the organization.

One instance in which a conflict arises is when a board member or his or her family member has a financial interest in a transaction before the board. For example, a conflict of interest would exist if a board member planned to sell or donate a conservation easement to the organization. A conflict may also exist if a board member has a professional relationship (as the attorney, real estate agent, or tax advisor, for example) with an individual selling or donating an easement to the organization.

Disclosure is the first step in avoiding conflicts of interest. Each board member should disclose to the board the existence or appearance of any conflict of interest. If a conflict exists, the board member should recuse him or herself from all discussions, consideration and voting on the issue. It may also be advisable for the board member in question to execute an affidavit memorializing his or her assurance that he or she will not be involved in any discussions leading up to the acquisition, the board's vote, or any ongoing board discussions on the project. In certain instances, it may be more appropriate for the board to request that the director take a temporary leave of absence until the transaction has been completed.

To ensure that any potential conflict of interest is handled appropriately, the board should incorporate certain criteria into its approval of projects where a conflict of interest may exist. The approval should be contingent upon the following and confirmed through a board resolution:

- the transaction is fair and reasonable and furthers the mission and objectives of the organization;
- the project has been approved with full knowledge of the economic benefit to the director involved in the conflict of interest;
- the affected director has not participated in the vote approving the transaction and was absent both during the discussion of the project and at the time the board voted on the project.

For ongoing easement monitoring, any board members that have an interest in a property where the land trust holds an easement should recuse themselves from any discussion or voting regarding easement monitoring on their property and regarding any potential violations or enforcement actions, should they arise.

### Issues for Governmental Organizations

Although most of the CFCP's applicants are nonprofit organizations, governmental organizations such as cities, counties, resource conservation districts, and regional park or open-space districts are also eligible applicants. California law includes very specific provisions to insure that government officials are guided by the public interest, rather than by personal interest, when acting in an official capacity. The sidebar below includes more detailed information on the standards that apply to governmental organizations.



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## Developing a Conflict of Interest Policy

The CFCP recommends that land trusts adopt a written policy for dealing with conflicts of interest. Certain governmental organizations engaging in easement transactions, such as resource conservation districts, may also want to develop such a policy. Policies should include current transactions as well as future situations where owners of easement-encumbered land later join the board. The Land Trust Alliance's Handbook of Standards and Practices includes a list of standard elements that a conflict of interest policy should include as well as sample policies.

## CFCP Grant Application Requirements

The CFCP Request for Grant Applications requires that nonprofit organizations provide a statement from the board of directors certifying that funding from the CFCP for the proposed project will not present a conflict of interest for the board or any of its members. In addition, the CFCP now requires that all other organizations also submit a conflict of interest statement as part of their application. The CFCP can provide sample statements upon request.

In the event that a conflict of interest exists for an individual board member, the CFCP will need assurances that the appropriate steps were taken to address the conflict. This may include a board resolution certifying that the board member affected was not involved in the decision-making process and that the transaction is fair and reasonable to both the land trust and to the funding source. It may also include an affidavit from the board member certifying that the individual was not involved in any discussions or decisions involving the transaction and that the board member will not be involved in any future monitoring or enforcement of the easement. For CFCP-funded transactions, this ensures that the transaction is a fair and equitable investment for the state on behalf of the people of California.

### Conflict of Interest Standards for Governmental Organizations

For government officials, including RCD board members, the legal conflict of interest standards are more restrictive to ensure that individuals are guided by the public interest, rather than by personal interest, when dealing with contracts in an official capacity. Government Code section 1090 provides that an officer or employee may not make a contract in which he or she is financially interested. Any participation by an officer or an employee in developing, negotiating, or executing such a contract is a violation of section 1090. If the situation does not involve a contract, or if a contract in which an officer or employee has a financial interest is not ultimately executed, no violation exists. However, a conservation easement and a CFCP grant both fall under the definition of a contract. A board member or official is presumed to have made any contract executed by the organization, even if the individual disqualified himself or herself from any and all participation in the making of the contract.

The prohibition applies to virtually all state and local officers, employees and multimember bodies, whether elected or appointed, at both the state and local level. Section 1090 does not define when an official is financially interested in a contract. However, the courts have applied the prohibition to include a broad range of interests. The remote interest exception set forth in section 1091 enumerates specific interests which trigger abstention for board members but which do not prevent the board from making a contract. The interests set forth in section 1091.5 are labeled "non-interests" in that, once disclosed, they do not prevent an officer, employee or board member from participating in a contract. Any contract made in violation of section 1090 is void and cannot be enforced. In addition, an official who commits a violation may be subject to criminal, civil and administrative sanctions.

Accordingly, governmental organizations should be extremely cautious whenever there may be a potential conflict of interest and should be sure to review the provisions set forth in the Government Code.

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## Land Trusts: Add Your Board Members to the CFCP Mailing List

Would your board members be interested in receiving this CFCP newsletter? We would be happy to add them to our mailing list. Just send us their name and email address and we will include them in future mailings. Alternatively, feel free to forward the newsletter to your board members. Anyone who is interested in receiving a copy in the future can email us directly to be added at [cfcpc@conservation.ca.gov](mailto:cfcpc@conservation.ca.gov).

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## Upcoming Events:

The newly formed **California Council of Land Trusts** (see story on page 2) will hold an inaugural event in Sacramento on February 1, 2005. The event will include a first annual statewide land trust meeting highlighted with a reception in the State Capitol rotunda. For more information, please contact Darla Guenzler at 707-469-0926 or [darlag@inreach.com](mailto:darlag@inreach.com).

The **2005 California Agricultural Symposium**, sponsored by UC Davis, Cal Poly and Fresno State, will be held on March 23-24 in Sacramento. The symposium will offer "cutting-edge information on water, trade, environmental pressures, sustainability, biotechnology and more." To register, visit <http://calagsymposium.org/index.cfm> or call 530-752-1748 or 530-752-5451.

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We hope you've found this issue of *Focus on Farmland* useful and informative. Please contact us with any questions or ideas you have for future editions. Feel free to forward this email to other interested parties.

*If you wish to be added to or removed from this mailing list, email [cfcpc@conservation.ca.gov](mailto:cfcpc@conservation.ca.gov).*

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